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Counsel for
FRED HJELMESET,
Trustee in Bankruptcy

Not Signed: September 21, 2021

Stephen L. Johnson
U.S. Bankruptcy Judge

It does not appear lienholder Pacific Private Money was served with notice of this motion according to the certificate of service. See Schedule D (ECF 18) and ECF 211. Bankruptcy Rule 6004(c) requires parties with liens against the property to be sold receive notice under Bankruptcy Rule 7004. Provide evidence of service or have lender sign off on order authorizing sale and re-upload the order. If the lender is not Pacific Private Money, explain in further filing.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re

EVANDER FRANK KANE,

Debtor.

Case No. 21-50028 SLJ
Chapter 7
Hon. Stephen L. Johnson

ORDER AUTHORIZING TRUSTEE TO:
(I) SELL REAL PROPERTY;
(II) PAY LIENS, COSTS OF SALE,
REAL ESTATE COMMISSION
AND TAXES; AND
(III) PAY DEBTOR HIS HOMESTEAD
EXEMPTION
(2301 Richland Avenue, San Jose, CA 95125)

The Court, having reviewed and considered: (i) the Motion to: (I) Sell Real Property, Subject to Overbid; (II) Pay Liens, Costs of Sale, Real Estate Commission and Taxes; and (III) Pay Debtor His Homestead Exemption (2301 Richland Avenue, San Jose, CA 95125) [Docket 209] ("**Motion**"), filed by Fred Hjelmset, Chapter 7 Trustee ("**Trustee**") of the estate of the above-named Debtor; (ii) the Trustee's request for entry of an order approving the Motion, which request set forth that an overbid offer was received for the subject property and that the gross sale price increased from \$3,410,000 to \$3,430,000; and (iii) the Declaration of Gregg S. Kleiner in support thereof, notice of the Motion being adequate and proper under the circumstances and other good cause appearing

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1 IT IS HEREBY ORDERED THAT:

2 1. The Motion is approved in all respects in accordance with the terms of this Order;

3 2. The Trustee is authorized to:

4 (a) enter into the "California Residential Purchase Agreement and Joint Escrow
5 Instructions," along with the "Seller's Counter-Offer to Purchase Contract" with Iosefa Maria
6 Carmen Maiercan and George Chicioareanu (collectively the "**Agreement**") for the sale of 2301
7 Richland Avenue, San Jose, CA 95125 ("**Property**"). The Legal Description for the Property is
8 attached to this Order as **Exhibit 1**; and

9 (b) execute all documents necessary to complete the sale of the Property,
10 including, but not limited to, conveying the Property to the buyer. A copy of the Agreement is
11 attached as Exhibit A to the Declaration of Gregg S. Kleiner in Support of Request for Entry of
12 Order Authorizing Trustee to: (I) Sell Real Property; (II) Pay Liens, Costs of Sale, Real Estate
13 Commission and Taxes; and (III) Pay Debtor His Homestead Exemption (2301 Richland Avenue,
14 San Jose, CA 95125), filed on September 21, 2021.

15 3. Without further order from this Court, the Trustee is authorized to:

16 (a) sell the Property to Iosefa Maria Carmen Maiercan and George Chicioareanu
17 (collectively, "**Buyer**") for \$3,430,000, with the sale of the Property as is, where is, with no
18 representations or warranties;

19 (b) pay, from the Property sale proceeds only, the payoff demand submitted by
20 the lender, Pacific Private Money, Inc., its successors or assigns, under that certain deed of trust
21 recorded August 21, 2020, as Instrument No. 24583472, of official records, Santa Clara County,
22 California, and all other liens secured by the Property;

23 (c) pay, from the Property sale proceeds only, all real estate taxes secured by the
24 Property;

25 (d) pay, from the Property sale proceeds only, all other liens and claims secured
26 against the Property;

27 (e) pay, from the Property sale proceeds only, a commission equal to 5% of the
28 gross sale price, \$171,500 (\$3,430,000 x 5%), to be divided equally between the estate's broker,

1 Intero Real Estate Services, and Buyer's broker;

2 (f) pay, from the Property sale proceeds only, such liens, fees and costs related
3 to the sale, as provided in the Agreement and as is customary for these types of transactions,
4 including reimbursing Intero and or its agents the aggregate sum of \$800.00 for a property inspection
5 report; and \$475.00 for a termite inspection report;

6 (g) negotiate changes to the Agreement, including minor changes to the price, as
7 necessary; and

8 (h) deliver to the Debtor, from the Property sale proceeds, payment of his
9 homestead exemption in the amount of \$170,350, pursuant to Bankruptcy Code § 522(p), and hold
10 in reserve, until such time as the Debtor's appeal of the order reducing his homestead is resolved,
11 the sum of \$429,650.

12 4. The Court, having reviewed and considered the Declaration of Iosefa Maria Carmen
13 Maiercan in Support of Good Faith Purchaser Finding (2301 Richland Avenue, San Jose, CA 95125)
14 [Docket 216] and the Declaration of George Chicioreanu in Support of Good Faith Purchaser
15 Finding (2301 Richland Avenue, San Jose, CA 95125) [Docket 217], the Buyer is approved as a
16 buyer in good faith in accordance with § 363(m) of the Bankruptcy Code and the Buyer shall be
17 entitled to all of the protections provided to a good faith buyer under 11 U.S.C. § 363(m).

18 5. In the event that the Buyer does not timely close the transaction, the Trustee is
19 authorized, without need of a hearing or further order of this Court, to sell the Property on
20 substantially the same terms and conditions and at the same price set forth in the Motion,
21 \$3,410,000, to an alternative purchaser.

22 6. This order is effective upon entry and the stay otherwise imposed by Rule 62(a) of
23 the Federal Rules of Civil Procedure and/or Bankruptcy Code Section 6004.

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1 **EXHIBIT "1"**

2 **Legal Description**

3 For APN/Parcel ID(s): 439-33-007

4 THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE,
5 COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS
6 FOLLOWS:

7 BEGINNING AT A POINT IN THE CENTER LINE OF RICHLAND AVENUE 50 FEET WIDE,
8 DISTANT THEREON SOUTH 29° EAST 414.75 FEET FROM AN IRON BOLT SET AT THE
9 INTERSECTION OF SAID CENTER LINE PRODUCED NORTHWESTERLY WITH THE
10 CENTER LINE OF CURTNER AVENUE; THENCE ALONG THE CENTER LINE OF
11 RICHLAND AVENUE, SOUTH 29° EAST 55.17 FEET; THENCE AT RIGHT ANGLES AND
12 RUNNING SOUTH 61° WEST 209.25 FEET TO A 3/4 INCH PIPE IN THE SOUTHWESTERLY
13 LINE OF THAT CERTAIN 9.96 ACRE TRACT OF LAND CONVEYED BY F. A. HEITZMAN
14 TO Y. ARCHIBALD BY DEED DATED JANUARY 2, 1936 AND RECORDED JANUARY 3,
15 1936 IN BOOK 755 OF OFFICIAL RECORDS, PAGE 286; THENCE ALONG SAID
16 SOUTHWESTERLY LINE N. 28° 57' WEST 55.17 FEET; THENCE LEAVING SAID
17 SOUTHWESTERLY LINE AND RUNNING NORTH 61° EAST 209.21 FEET TO THE POINT
18 OF BEGINNING, AND BEING A PART OF LOTS 10 AND 11, AS SHOWN ON THAT
19 CERTAIN MAP ENTITLED "MAP OF THE CURTNER TRACT, BEING PORTION OF THE
20 SAN JUAN BAUTISTA RANCHO", FILED FOR RECORD DECEMBER 18, 1830 IN BOOK A
21 OF MAPS, PAGE 34, SANTA CLARA COUNTY RECORDS.

22 ***** END OF ORDER *****

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